

Upper Clark Fork River Basin Steering Committee
Meeting Summary
May 2, 2007

Introductions

Gerald Mueller and members of the Upper Clark Fork River Basin Steering Committee (Steering Committee) introduced themselves. Those in attendance included:

Members	Group/Organization Represented
Bob Benson	Clark Fork Coalition
Marci Sheehan	Atlantic Richfield (ARCO)
Carol Fox	Natural Resource Damage Program (NRDP)
Stan Bradshaw	Trout Unlimited
Holly Franz	PPL Montana
Jim Dinsmore	Granite Conservation District
Senator Dave Lewis	Lewis and Clark County
Mike McLane	Montana Department of Fish, Wildlife and Parks (DFWP)
 Public	
Michael Kustudia	Clark Fork River Technical Assistance Committee (CFRTAC)
Darryl Barton	CFRTAC
Maureen Conner	Granite County Commissioner
 Staff	
Jan Langel	DNRC Helena Regional Water Resources Office
Bill Schultz	DNRC Missoula Regional Water Resources Office
Gerald Mueller	Coordinator

Agenda

- Review summary of the February 28, 2007 Meeting
- Updates
 - Basin water supply
 - Steering Committee funding
 - Watershed Restoration Coalition/Clark Fork Coalition Community Restoration and Redevelopment Plan for the Upper Clark Fork Valley
- 2007 water legislation
- Water Milltown Dam water right paper
- Public Comment
- Next Meeting

February 28, 2007 Meeting Summary

The Steering Committee made no changes to the meeting summary.

Updates

Basin Water Supply - Mike McLane gave a Power Point presentation summarizing the available information on the basin's water supply. The highlights of his presentation follow.

As of April 1, 2007:

- Snowpack in Upper Clark Fork basin is below average.
- Snowpack decreased 14% from March 1.
- Snow content was:
 - 71% of average,
 - 75% of '06, and
 - tied for the 4th lowest of record w/ 1977.
- Assuming average precipitation:
 - Stream flow in April to July is predicted to be 71% to 83% of average.
- Blackfoot has second lowest snowpack of record.
- Blackfoot flow near confluence with the Clark Fork River is projected to decrease to 700 cfs during:
 - 8/3 - 8/20 given average precipitation;
 - 7/29 - 8/15 given below average precipitation; and
 - 7/23 - 8/9 given well below average precipitation.

Steering Committee Funding - Gerald Mueller reported that the budget bill including funding for the Steering Committee for the 2008-09 biennium (\$20,000 annually) failed to pass the legislature before it adjourned. Senator Lewis stated that he will attempt to assure that Steering Committee funding is included in the budget during the upcoming special session, which Governor Schweitzer has not yet called. During the regular session, Senator Lewis met with Mary Sexton and she stated that DNRC is willing to fund the Steering Committee.

Watershed Restoration Coalition/Clark Fork Coalition Community Restoration and Redevelopment Plan for the Upper Clark Fork Valley - Bob Benson and Gerald Mueller reported on this item. Both attended the most recent meeting of this project on April 3, 2007. The purpose of the meeting was to review and validate the objectives for the five themes that make up the Upper Clark Fork River Valley Community Draft Plan. The themes are: cleanup and restoration, education, land use planning, water usage, and economic development. The meeting participants broke into groups to consider the themes. Gerald Mueller participated in the group addressing water usage, the theme most relevant to the Steering Committee activities. The goals and objectives for this theme are:

Goal 1 - Secure the necessary funding and conduct a study to define the surface/ground water interactions in the Upper Clark Fork River Valley.

- Objective 1.1 - Assess the groundwater and surface water interactions in the Upper Clark Fork River Basin for helping to plan future water conservation projects.
- Objective 1.2 - Characterize the “water system” (aquifer, stream, rivers, climate)
- Objective 1.3 - Find funds from the NRD.

Goal 2 - Encourage the state water court to schedule the Upper Clark Fork area adjudication as quickly as possible.

- Objective 2.1 - Complete the adjudication process in the Upper Clark Fork River Basin

Goal 3 - Develop and implement a strategic plan for the Clark Fork River and its tributaries for water use that provides necessary water for agricultural uses and increases stream flow for fish and recreational use.

- Objective 3.1 - Augment stream flow using stored water during the late season irrigation periods.
- Objective 3.2 - Investigate an instream flow program to purchase or lease water from willing sellers.
- Objective 3.3 - Start a water basin water conservation program of free help to irrigators to improve water efficiencies/ag.
- Objective 3.4 - Work on a tributary water conservation +win-win solution to flow augmentation.
- Objective 3.5 - Help ag folks do Best Management Practices on irrigation projects.
- Objective 3.6 - Store water for recreation and flow agriculture (Georgetown Lake a good example).
- Objective 3.7 Encourage beavers in the basin for “natural storage” in the places are compatible.

Gerald Mueller stated that he expressed reservations in his group about the scope of the goals and objectives. The group included only two basin water users, both from Gold Creek. This project began as an effort to assist the people in the Deer Lodge Valley with envisioning a desired future once the Clark Fork River metals contamination was cleaned up. It has grown to a strategic plan for the entire upper Clark Fork. Mr. Mueller stated that he will meet with the new director of the Clark Fork Coalition, one of the two sponsoring organizations of this project along with the Water Restoration Coalition. Mr. Mueller also explained the Steering Committee’s recent publication on flow in the upper river.

2007 Water Legislation

Holly Franz passed out the list of water bills that passed the legislature. Some have not yet been acted on by Governor Schweitzer. The list is included below in Appendix 1. Ms. Franz, Stan Bradshaw, and/or Mike McLane led the discussion of the following bills.

HB 20 - This bill makes the recovery of court costs and attorney fees the same throughout the state. Previously different provisions existed for the upper Clark Fork River basin. If a final decision by DNRC on an application for a permit is appealed to district court, the district court must award the prevailing party reasonable costs and attorney fees. Also, a water right holder who obtains party relief against a person using water without a water must be awarded reasonable costs and attorney fees.

HB 39 - This bill provides that unless specific provisions are made otherwise, water rights automatically transfer with the property when property is sold. The transfer will be accomplished through linking the DNRC water rights data base and the Department of Revenue’s cadastral data base. A transfer fee would have to be paid at time of closing.

HB 87 - This bill allows a water commissioner to enforce water right changes approved by DNRC.

HB 304 - This bill creates an interim water policy committee and charges it over the next biennium with examining issues related to groundwater-surface water interactions, water management and water rights permitting in closed basins, coordination of water quality requirements with the water appropriations process, wells exempt from the permitting process, and other issues. Senators

Wanzenried, Lind, Perry, and Tash have been appointed to the committee. The House appointments have not yet been made.

HB 473 - This bill eliminates the water rights adjudication fee for all users, but does not refund the fees already paid. It also maintains the penalty for water right holders that did not pay the fee when previously required to do so.

HB829 - This bill creates a means to ratify the impending water rights compact among the Blackfeet Tribe, the State of Montana, and the United States, and appropriates \$15 million from the state general fund to a Blackfeet Tribe water rights compact mitigation account.

HB 831- This bill revises water laws in closed basins; amends requirements for an application to appropriate ground water in a closed basin; provides that certain applications to appropriate surface water are exempt from closed basin requirements; provides requirements for hydrogeologic assessments, mitigation plans, and aquifer recharge plans; provides minimum water quality standards for certain discharges of effluent; requiring that data be submitted to the Bureau of Mines and Geology; and provides for a case study and requirements and a fee for participation in the case study. A summary of the ground water permitting requirements in a closed basin prepared by Krista Lee Evans is attached in Appendix 2. DNRC is concerned that this bill negates its previous effort to front load the permit process. Under section 14, 15 and 16 of the bill, the applicant determines if her or his proposed ground water development would result in a net depletion of to surface water and if that net depletion would result in an adverse affect to a prior appropriator. If an adverse affect is predicted, then the applicant must develop a plan to mitigate the impact. DNRC does not have an opportunity to review these determinations until the application is filed and the applicant has spent significant time and money.

SB128 - This bill makes the DFWP water leasing program permanent. It also allows DFWP to change water rights that it holds in fee simple to instream flow purposes to protect, maintain, or enhance streamflow to benefit fishery resources until June 30, 2019.

SB178 - This bill, which was sponsored by Senator Lewis at the request of the Steering Committee, removes references to Milltown Dam in the Steering Committee and basin closure statutes. Because the Dam is scheduled for removal in 2008, the statutory references to it are replaced with the confluence of the Blackfoot and Clark Fork Rivers.

SB324 - This bill, which was introduced at the request of the Clark Fork River Basin Task Force, requires a state agency that requires an aquifer test to forward copies of the test results to the Bureau of Mines and Geology, and requires a well driller to designate the location of the well being drilled using two methods.

SB365 - This bill allows district courts to authorize collection of fees for water commissioners at the beginning of the water distribution season.

SB370 - This bill provides that an appropriation right is not abandoned if an appropriator ceases to use all or part of an appropriation right to comply with a candidate conservation agreement.

SB376 - This bill modifies the caps on the amount of water stored in federal reservoirs that the state can lease to Montana water users for uses in the basin in which the federal reservoir is located. The cap for all reservoirs is 1,000,000 acre-feet.

Milltown Dam Water Right Paper

The Steering Committee reviewed and approved the May 1, 2007 draft of the Milltown Dam water right paper. See Appendix 3. This draft incorporates comments by the state agencies on the March 6 draft circulated after the February 28, 2007 Steering Committee meeting. Mr. Mueller will use the approved May 1 version to write an initial draft of the paper prior to the Steering Committee's next meeting.

Public Comment

There was no additional public comment.

Next Meeting

The next meeting is scheduled for Wednesday, September 19, 2007 in Deer Lodge. The draft of the Milltown Dam water right paper will be considered at that time.

Appendix 1
Introduced Bills Matching the Search Criteria
Preference List - Water Alive

* after status indicates the bill *is probably* dead

Total number of Introduced Bills -20

Total number of Introduced and Unintroduced Bills .20

Bill Type - Number	LC Number	Primary Sponsor	Status Date	Status	Short Title
HB20	LC0426	Walter McNutt	Chapter Number Assigned	03/27/2007	Clarify injunctive relief availability for water right enforcement
HB36	LC0230	John L Musgrove	Chapter Number Assigned	04/25/2007	Repeal sunset for loans to water users
HB39	LC0225	Walter McNutt	(H) Transmitted to Governor	04/26/2007	Ownership update for water rights
HB87	LC0226	Douglas Cordier	Chapter Number Assigned	03/30/2007	Water commissioner authority over changes
HB304	LCI 599	Kevin T Furey	(H) Returned from Enrolling	04/26/2007	Create interim water policy committee
HB473	LC2531	John (Jack) W Ross	(S) Signed by President	04/19/2007	Eliminate water adjudication fee
HB717	LC2443	Wayne Stahl	Chapter Number Assigned	04/06/2007	Ratify Bowdoin wildlife refuge water compact
HB829	LC1195	Llew Jones	(H) Returned from Enrolling	04/27/2007	Blackfeet Tribe - State water compact implementation
HB831	LC1383	Walter McNutt	(S) Signed by President	04/26/2007	Revise water use laws in closed basins
	LC0856	Michael Lange	(H) Filed with Secretary of State	04/16/2007	Urge support for Montana Missouri River water rights
HJ34	LC2332	Kendall Van Dyk	(H) Filed with Secretary of State	04/16/2007	Urge protection of Big Horn River
HJ40	LC2469	Jonathan Windy Boy	(H) Filed with Secretary of State	04/16/2007	Urge Congress to prioritize regional water projects
SB128	LC0435	Jesse Laslovich	(S) Signed by President	04/24/2007	Eliminate termination of FWP instream flow and revise laws governing
SB178	LC0882	Dave Lewis	Chapter Number Assigned	04/05/2007	Remove Militown dam reference in Clark Fork steering committee law
SB187	LC1985	Keith Bales	Chapter Number Assigned	03/27/2007	Fort Keough reserved water rights compact
SB248	LC0951	Bob Story	Chapter Number Assigned	04/17/2007	Ratify USFS water compact
SB324	LC2008	Verdell Jackson	(S) Transmitted to Governor	04/25/2007	Revise ground water data collection procedures
SB365	LC1555	Bob Story	(S) Signed by President	04/27/2007	Revise laws related to water distribution and water commissioners
SB370	LC1682	Bill Tash	(S) Signed by Governor	04/28/2007	Revise law on water right abandonment
SB376	LC2009	Verdell Jackson	(S) Transmitted to Governor	04/24/2007	Revise water marketing law

Appendix 2

House Bill 831 (2007) -- Ground Water Appropriations in Closed Basins

When and where do the new requirements of HB 831 apply?

- Closed basins: Upper Missouri, Teton, Upper Clark Fork, Madison/Jefferson, and Bitterroot
- The sideboards outlined in HB 831 apply to applications for a new water right when ground water is the water source that will be used.

Will HB 831 affect a person's ability to develop a domestic well?

- HB 831 will only affect the ability to develop a domestic or stock well if that well will produce more than 35 gallons per minute (gpm) or use more than 10 acre feet per year.
- The exemption contained in 85-2-306 for individual wells (less than 35 gpm/10 ac ft) still exists in statute

What are the steps that an applicant must follow as the result of HB 831?

Step 1

- an applicant must complete a hydrogeologic assessment to determine whether or not the proposed ground water development will have a net depletion on surface water.

Step 2A - no net depletion

- If the hydrogeologic assessment determines that there will not be net depletion to surface water the applicant proceeds through the existing new appropriation statutes to acquire a beneficial use permit.

Step 2B - net depletion

- If the hydrogeologic assessment determines that there will be net depletion the applicant must determine whether or not that net depletion will result in adverse affect to a prior appropriator (senior water right).

Step 3A No adverse affect

- If the applicant determines there is no adverse affect to a prior appropriator (senior water right) the application moves through the existing DNRC new appropriations process to acquire a beneficial use permit.

Step 3B - Adverse affect

- If the applicant determines that there will be adverse affect to a prior appropriator the applicant has two options
 - Terminate the application; or
 - Develop a mitigation plan or aquifer recharge plan that will offset the amount of net depletion that results in adverse affect.

Step 4 - Mitigation or Aquifer Recharge plan

- HB 831 provides specific guidance on what, at a minimum, must be included in a plan to offset adverse affect.
- There are many options for an applicant with regard to these plans - an applicant can purchase a water right from another user, change an existing water right to a different beneficial use, point of division, or place of use, or manipulate the timing of a new use to name a few.

Step 5 - Submit the entire "package" of information to DNRC

- The applicant submits all of the information that they deem necessary to defend the application. The information, at a minimum, must include the hydrogeologic assessment

Step 6 - Public Notice

- The department analyzes the information submitted by an applicant (application, hydrogeologic assessment, mitigation or aquifer recharge plan (if necessary), an application for a change in appropriation right (if necessary to implement a mitigation or aquifer recharge plan), and any other information the applicant feels is appropriate or necessary to determine whether or not the

application is correct and complete.

Appendix 3

Outline of the Milltown Dam Water Right Paper

May 1, 2007

I. Introduction

- A. Pending dam removal
- B. Removal will affect the Milltown Dam water right(s)
- C. Purpose of the paper
 - 1. Identify and discuss alternatives for the water right(s)
 - 2. Inform basin water users about the alternatives

II. Montana Water Law

- A. Article 1X Section 3(3) of Montana's Constitution establishes state ownership of the state's water and the right of her people to use water beneficially.
- B. Definition of a water right
- C. Prior appropriation doctrine
 - 1. First-in-time, first-in-right
 - 2. Use it or lose it
 - 3. Law regarding abandonment
 - 4. Water right call mechanism/process
- D. Appropriation of Water
 - 1. General provisions and rules
 - 2. Change of use
 - a. Point of diversion
 - b. Place of use
 - c. Purpose of use
 - d. Place of storage
 - e. Special criteria for uses with 5.5 cfs/4,000 acre-feet per year
 - f. Temporary leasing provisions
 - g. Approval criteria
 - i. Adverse effects tests
 - ii. Historic use
 - iii. Rule requirements
- D. State wide water rights adjudication

III. Milltown Dam Water Rights

- A. Existing hydropower water rights
 - 1. Claim features and attributes (includes discussion on operational features)
 - 2. Status of adjudication
- B. Superfund/NRD obligations
 - 1. Milltown consent decree provisions specific to the Milltown water right
 - 2. Status of land and water appraisal process

IV. Milltown Dam Water Right Change Alternatives

- A. Abandonment
- B. Withdrawal
- C. Alternative uses
 - 1. Transfer ownership to new or existing hydropower facilities
 - a. Requires change of point of diversion and place of use/storage
 - b. Enforcement implications

- 2. Transfer to consumptive use
 - a. Unlikely to pass adverse Effects test
- 3. Transfer to fishery instream flow right
 - a. Requires change of purpose of use from hydropower to fishery
 - b. Amount of right based on fishery needs
- 4. Transfer to augmentation/mitigation use
- C. Transfer of ownership
 - 1. Other governments
 - a. Federal (e.g. Department of Interior)
 - b. State (e.g. Montana Department of Fish, Wildlife and Parks)
 - c. Tribes (e.g. Confederated Salish and Kootenai Tribes)
 - 2. Private entities

V. Over view of Upper Clark Fork Basin Water Budget

- A. Basin & sub basin yields

VI. Upstream Water Uses

- A. Junior water rights
 - 1. Location
 - 2. Purpose
 - 3. Priority date
 - 4. Amount
- B. Basin by basin discussion
 - 1. Existing water allocation activities
 - 2. Limiting water rights
 - 3. Priorities
 - 4. Management strategies

VI. Enforcement and Management Alternatives

- A. Water right calls
- B. Low flow water management
 - 1. Enforced through water commissioners
 - 2. Implemented through voluntary drought plans
 - 3. Conditioning in the change of use process
- C. Other